

August 31, 2007

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **E9901110**

**COLLEEN M. MOHLER**  
Code Enforcement Appeal

Location: 16241 Southeast Lake Moneysmith Road

Appellant: Colleen M. Mohler  
*represented by* **Michael Mohler**  
16241 Southeast Lake Moneysmith Road  
Auburn, Washington 98092  
Telephone: (253) 939-9763

King County: Department of Development and Environmental Services (DDES)  
*represented by* **DenoBi Olegba**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 205-1528  
Facsimile: (206) 296-6604

**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal with revised compliance schedule
Department's Final Recommendation:	Deny appeal with further revised compliance schedule
Examiner's Decision:	Deny appeal with further revised compliance schedule

**EXAMINER PROCEEDINGS:**

Hearing opened:	June 14, 2007
Hearing continued administratively:	June 14, 2007
Hearing record closed:	June 25, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On April 27, 2007, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellant Colleen Mohler that found code violations on an RA-5 zoned property located at 16241 Southeast Lake Moneysmith Road in the unincorporated part of the County east of Auburn. The Notice and Order cited Ms. Mohler and the property with the following violations of County code:
  - A. Accumulation of inoperable vehicles and vehicle parts throughout the exterior premises and parking/storage of vehicles on non-impervious (unimproved) surfaces.
  - B. Accumulation of assorted rubbish, salvage and debris on the premises.
  - C. Construction of accessory structures without required permits, inspections and approvals.
  - D. Installation of a woodstove in violation of KCC 16.02.240.

The Notice and Order required correction of such violations by May 31, 2007, by removal of the inoperable vehicles and vehicle parts or storage within a fully enclosed building; cessation of the parking/storage of vehicles on non-impervious surfaces; removal of the assorted rubbish, salvage and debris; application for and obtainment of the necessary permits, inspections and approvals for the accessory structure, or removal by demolition (under a demolition permit with removal of demolition debris); and obtainment of the required permits, inspections and approvals for the woodstove or removal of same.

2. Ms. Mohler, represented by her son, filed a timely appeal of the Notice and Order, claiming that the violation charges in the Notice and Order are vague and discriminatory in their application and enforcement. The Appellant claims that greater detail of DDES's requirements to achieve compliance was requested but never provided (the Appellant claims that numerous communications to DDES were not returned). The Appellant submitted a worklog of debris removal and pictures supporting the Appellant's assertion of efforts to comply. The Appellant lastly requests dismissal of the Notice and Order with prejudice.
3. The preponderance of the evidence in the record supports the Notice and Order finding of a violation of County code by the accumulation of inoperable vehicle and vehicle parts on the exterior premises, and parking/storage of vehicles on non-impervious (unimproved) surfaces, in violation of the County code as charged. The Appellant desires to retain a custom-bodied VW Bug onsite; that can be done if it is brought into interior storage, of which the Appellant stated he has some onsite, or if brought to operable condition.
4. The preponderance of the evidence in the record demonstrates that a great deal of rubbish, salvage and debris has been accumulated on the exterior premises of the property. The Appellant claims that some of the material is used in a landscaping business. Some of the material does appear to be related to landscaping use: empty pots and buckets, plastic piping, plant trays, junked wheelbarrows and parts, discarded handtools, etc. But, except for a few relatively ordered piles of concrete blocks and bricks, the material is haphazardly dumped as discarded material rather than organized (even roughly) for ready use in any business sense. And DDES notes that under the RA-5 zoning applied to the property a landscaping business is not permitted onsite unless it is conducted as an accessory (subordinate) use to an established retail nursery

primary use. The evidence in the record does not show that a retail nursery is operated onsite and that any landscaping business use of the site would therefore be legitimate. In any case, much of the landscaping-related material would still constitute salvage and debris because of its dumped and scattered nature; a legitimate landscape business use would still be precluded from conducting a dump onsite.

5. Most of the rubbish, salvage and debris scattered onsite cannot reasonably be claimed to be associated with a landscaping business use, such as the discarded household appliances, a camper shell, a demolished travel trailer, auto/truck tires and wheel rims, a metal drum, an abundance of junk metal and lumber, piping, children's play equipment (a long crawling tube), discarded chickenwire fencing, metal gating, glass doors, metal cans, plastic bottles and sheeting, and scattered brick, concrete and rock. Those items have been merely dumped onsite in mostly scattered fashion, and in some areas significant amounts are half buried in the ground. Some have been gathered into rough piles for sorting and removal.
6. The preponderance of the evidence demonstrates that the accumulation of rubbish, salvage and debris on the property constitutes a violation of County code as found by the Notice and Order.
7. The Appellant asserts that no debris has been brought onsite since a 2006 letter was received from DDES noting the violations, and that some good faith efforts have been made toward removal of rubbish, salvage and debris. The Appellant, however, contends that DDES is unfairly enforcing the code, since many other properties in the vicinity have inoperable vehicles and rubbish, salvage and debris on their exterior premises, and also that some of the material constitutes "rural-type collectibles" which King County should allow to remain. The Appellant asserts that only material which is actually a public nuisance should be required to be removed. The Appellant also desires to have an objective review of potentially violating material, contending that DDES operates on a punitive, inconsistent and unresponsive basis.
8. In addition, the Appellant desires to be specifically permitted to store salvaged construction lumber onsite, as well as salvaged brick and concrete blocks, stating that he wants to stack legitimate construction materials in an orderly manner out of view of fronting roads. The allowable retention of such items is for DDES to determine, and would seem to turn on whether or not the material is legitimately part of personal residential or other allowed use of the property rather than being stored as construction material for offsite jobs or sale, etc.
9. The accessory structure cited by DDES as in violation is shown by the evidence submitted to be less than the 200 square foot threshold for permit requirements for such accessory structures; nothing in the record contradicts the evidence and testimony submitted by the Appellant in such regard. DDES has not provided any evidence of its own regarding the structure's size and has not met its burden of proof showing that it indeed requires regulatory permits, inspections and approvals. The preponderance of the evidence in the record does not support the third charge of the Notice and Order that an accessory structure has been constructed without required permits, inspections and approvals.
10. The Appellant has stipulated to decommissioning a formerly operating woodstove in the onsite residence and has provided evidence of the removal of the woodstove's exterior chimney. No evidence of proper permits, inspections and approvals for the woodstove is in the record.
11. The preponderance of the evidence in the record supports the fourth charge of violation of County code by installation of a woodstove without necessary permits in violation of County code.

12. DDES requests that the Examiner compel entry by DDES into the onsite residence to confirm that the alleged woodstove has been removed. The Examiner finds no prohibition of storing an unused woodstove inside a structure, and cannot require removal. The Examiner shall therefore simply sustain the Notice and Order with regard to the woodstove, but change the compliance order to require that the woodstove remain inoperable and not used until and unless the proper permits are obtained for proper installation and use. If DDES suspects that woodstove operation has been reestablished, it has its standard enforcement mechanisms available to it to investigate a new suspected violation.
13. The Appellant requests a 90-day compliance schedule that would not commence until the County has executed junk vehicle certificates for the inoperable vehicles onsite. The Examiner shall not honor such request, because the County's willingness to execute such certificates is on a courtesy basis. Any person needing a junk vehicle certificate for inoperable vehicles with insufficient registration and ownership documentation may arrange to obtain a certificate from a law enforcement agency. (The Examiner does not mean to imply that DDES should not perform the certification, which it indicates it is willing to do; there is no justification, however, to tie the compliance schedule commencement to completion of the certification.)

#### CONCLUSIONS:

1. The Examiner has no authority over DDES's administrative manner and approach to its code enforcement actions. The only matter before the Examiner to adjudicate in this case is the appeal itself, limited to the context of the violation charges of the Notice and Order.
2. The issue of what county regulations permit with respect to the permissibility of maintaining "rural-type collectibles" in exterior storage on private properties is not a matter under the Examiner's authority. The legislative wisdom of state and county lawmakers must be respected "as is" in deciding a code compliance matter, since policy decisions are the province of the legislative branch. An administrative or quasi-judicial decisionmaker cannot substitute the decisionmaker's judgment for that of the legislative body "with respect to the wisdom and necessity of a regulation." [*Cazzanigi v. General Electric Credit*, 132 Wn. 2d 433, 449, 938 P.2d 819 (1997); *Rental Owners v. Thurston County*, 85 Wn. App. 171, 186-87, 931 P.2d 208 (1997)] The Appellant's claims and concerns in this regard belong in the legislative arena. The Examiner makes no judgment pro or con with respect to these issues.
3. The Examiner cannot address the Appellant's complaints from a common law equity standpoint (essentially with the Appellant contending that enforcement of the subject regulations is inequitable given the asserted similar condition of other properties in the vicinity with respect to presence of inoperable vehicles and rubbish, salvage and debris). The Examiner is without jurisdiction to consider matters of equity in the law. They must instead be taken to a court of general jurisdiction, the Superior Court. The Examiner is generally limited to applying "black letter" law as duly enacted by statute, ordinance and rule, and has no authority to adjudicate common law issues such as claims in equity. [*Chaussee v. Snohomish County*, 38 Wn.App. 630; 689 P.2d 1084 (1984)]
4. The preponderance of the evidence in the record demonstrates that inoperable vehicles and vehicle parts are accumulated on the exterior of the property, that vehicles are parked on non-impervious, and that there is an accumulation of rubbish, salvage and debris on the exterior of the property. The first two violations found by the Notice and Order are therefore correct. The third found violation, regarding the construction of the accessory structure, is not supported by the evidence and therefore shall be reversed. Lastly, the woodstove violation is supported by a preponderance of the evidence in the record and that charge shall be sustained as.

5. DDES recommended an extension of the compliance schedule, given the amount of material onsite to remove and dispose of properly, recommending that the extension be to the end of October, 2007. The Examiner shall impose a new 90-day schedule which shall extend the period through the end of November, 2007. The Appellant is advised, however, to accelerate and complete cleanup before the onset of the rainy season and resultant soggy ground conditions which will make the work more difficult.

DECISION:

The appeal is SUSTAINED with respect to violation 3 regarding the accessory structure, and the Notice and Order reversed in such regard. With respect to violation charges 1, 2 and 4 governing the inoperable vehicles and vehicle parts; parking/storage of vehicles on non-impervious surfaces; accumulation of assorted rubbish, salvage and debris; and the woodstove, the appeal is DENIED and the Notice and Order sustained, except that the compliance requirements shall be revised as stated in the following Order.

ORDER:

1. Remove inoperable vehicles and vehicle parts from the premises and/or store these items within a fully enclosed structure, and cease parking/storage of vehicles on non-impervious surfaces *by no later than November 30, 2007*.
2. Remove the rubbish, salvage and debris from exterior of the premises *by no later than November 30, 2007* and dispose of these items at an approved facility.
3. Any woodstove within a structure onsite shall be kept in inoperable condition and not used until and unless the proper permits are obtained for proper installation and use.
4. No penalties shall be assessed by DDES against Ms. Mohler and/or the property if the above deadlines are complied with. If any one of them is not, DDES may assess penalties against Ms. Mohler and/or the property retroactive to the date of this order as provided by County code.

ORDERED August 31, 2007.

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Peter T. Donahue  
King County Hearing Examiner

TRANSMITTED August 31, 2007, via certified mail to the following:

Colleen M. Mohler  
16241 SE Lk. Moneysmith Rd.  
Auburn WA 98092

Colleen M. Mohler  
1210 - 26th Ave. Ct.  
Milton WA 98354

Mike Mohler  
1202 - 26th Ave. Ct.  
Milton WA 98354

TRANSMITTED August 31, 2007, to the following parties and interested persons of record:

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16241 SE Lk. Moneysmith Rd.  
Auburn WA 98092

Colleen M. Mohler  
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Milton WA 98354

Mike Mohler  
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Lamar Reed  
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Toya Williams  
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### NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

### MINUTES OF THE JUNE 14, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9901110.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were DenoBi Olegba representing the Department; Mike Mohler representing the Appellant.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report to the Hearing Examiner
- Exhibit No. 2 Copy of the Notice & Order issued April 27, 2007
- Exhibit No. 3 Copy of the Notice and Statement of Appeal received May 15, 2007
- Exhibit No. 4 Copies of codes cited in the Notice & Order (submitted June 15, 2007)
- Exhibit No. 5 Photographs (33 color copies) of subject property w/2-page cover log
- Exhibit No. 6 Emails from Michael Mohler dated March 22 and 28, and April 5 and 30, 2007; email response from DenoBi Olegba dated May 1, 2007; listing of the emails
- Exhibit No. 7 Log of home cleanup and organization with attached photos (3 pages, black and white)
- Exhibit No. 8 Photographs (1 page, black and white) of building on subject property
- Exhibit No. 9 Diagram of structure with measurements
- Exhibit No. 10 Photograph (color copy) of entry to subject property

The following exhibit was offered and entered into the record on June 25, 2007:

- Exhibit No. 11 Mike Mohler response letter dated June 25, 2007